IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 4791 of 2005

Between:

Mir Mazhar Ali, s/o. J.M. Kazim Ali, aged 29 years,

R/o.Southern Street, Ponangi Road, Eluru, West Godavari District.

..... PETITIONER

AND

1 Eastern Power Distribution Company of Andhra Pradesh Limited,

rep., by its Chief General Manager at Visakhapatnam.
2 The Superintending Engineer, Operation, Eastern Power Distribution

Company of Andhra Pradesh Limited, Eluru.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ or writs, order or direction, declaring the Tender Notice dt.16-2-2005 issued by 2nd respondent, which was published in newspapers on
17-2-2005 and the proceedings dt.25-2-2005 in Lr.No.SE/O/ELR/DE-T/AE-PS/F/D.No.2348/05 on the file of the 2nd respondent, as illegal, arbitrary, without jurisdiction, discriminatory and violative of principles of natural justice; award costs and pass such other or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents1 & 2: MR. V. Ajay Kumar

S.C. FOR EPDCL

The Court at the stage of admission made the following

ORAL ORDER:

Heard the learned counsel for the petitioner as well as the learned standing counsel appearing on behalf of respondents
1 and 2.

2. The writ petition is filed seeking a Mandamus to declare the action of the second respondent-Superintending Engineer, Operation, Eastern Power Distribution Company of Andhra Pradesh Limited, Eluru, in issuing Tender Notice, dated
16-02-2005, which was published in newspapers on
17-02-2005 and also the proceedings dated 25-02-2005 in Letter No.SE/O/ELR/DE-T/AE-PS/F/D.No.2348/05, as illegal, arbitrary, and violative of principles of natural justice.

3. The facts, which are not in dispute, are that there was an agreement between the petitioner and the second respondent regarding the spot billing work with effect from 25-10—2004 to 24-10-2005. The said agreement was entered into on 25-10-2004. While so, the second respondent cancelled the contract on 25-02-2005 with one month's notice and called for fresh tenders by way of issuing a notification dated
16-02-2005. Having been aggrieved by the said notification, the present writ petition is filed.

4. The learned counsel for the petitioner contends that the agreement entered into between the petitioner and the second respondent is subsisting and if the contract is to be terminated, it is imperative for the second respondent to issue a show cause notice to the petitioner and cancel the same. Since no such show cause notice had been issued, the action of cancelling the contract by the second respondent is violative of principles of natural justice and accordingly the same is vitiated. In support of his contention, learned counsel for the petitioner placed strong reliance on the decision of the apex Court in ***Mahabir Auto Stores v. Indian Oil Corpn.***.

5. Their Lordships of the apex Court, in the aforesaid judgment, held that eventhough there is no agreement, it is incumbent upon the other party to issue a show cause notice before terminating the contract.

6. But, in the present case, it is to be seen that there is a specific contract. Clause 9 of the contract envisages that the contract can be terminated at the instance of the second respondent with one month's notice and whereas if the same has to be terminated at the instance of the petitioner, notice of three months is required. This is specifically incorporated in the terms and conditions of the contract. The petitioner is a party to it and the terms and conditions of the contract are binding on both the parties.

7. As already pointed out in the judgment referred to supra, it was held by the apex Court that eventhough there was no contract at all, the principles of natural justice are required to be followed. But, in the present case, there is an agreement with the specific condition that the contract can be terminated without assigning any reason with one month's notice or three months' notice, as the case may be, and the same is binding on both the parties. Therefore, with great respect, the observations made and the principle laid down by the apex Court in the judgment relied upon by the learned counsel for the petitioner, referred to supra, are not applicable to the present set of facts.

8. Furthermore, the most conspicuous fact borne on record is that after the termination of contract and after issuance of the notification calling fresh tenders, the petitioner had participated in the tenders and quoted higher amount than the amount which he was paying in the contract that was terminated by the impugned proceedings.

9. The above fact would only reveal that the petitioner had conceded to the procedure adopted by the second respondent, having yielded to the procedure and having participated in the tender proceedings, he cannot be allowed now take a “U” turn and contend that the termination of the contract is illegal.

10. For the foregoing reasons, the writ petition is devoid of merit and the same is liable to be dismissed.

11. Accordingly, the writ petition is dismissed at the stage of admission. No costs.

_____ **D.S.R.VARMA, J**

29TH MARCH 2005

ISN

To

1 The Chief General Manager, Eastern Power Distribution Company of

Andhra Pradesh Limited, at Visakhapatnam.

2 The Superintending Engineer, Operation, Eastern Power Distribution

Company of Andhra Pradesh Limited, Eluru.

3 Two CD copies.